S.B.CIVIL WRIT PETITION NO.3711/2004.

DATE OF ORDER : 21.02.2005.

HON'BLE MR. R.P. VYAS, J.

Mr.Mahendra Singh Godara for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

The instant petition is directed against the impugned order of recovery dated 27.06.2001(Annexure 6) and recovery notice dated 09.10.2003 (Annexure 8) issued by the respondent No.3 against the petitioner.

Brief facts giving rise to the instant petition are that the petitioner was initially appointed as Patwari by virtue of order dated 10.9.1965(Annex.1) and pursuant to that order, he joined the services on 18.9.1965. The petitioner passed the departmental examination for the regularisation of the service as per the Service Rules and after passing the departmental examination, an order dated 8.8.1972 (Annexure 2) was issued by the respondent- department, wherein the petitioner was shown at S.No.205 and date of confirmation had been shown in the service record was w.e.f. 18.9.1965. Thereafter, a Notification dated 25.1.1992 was issued by the State Government in order to extend the benefit of Selection Grade. Pursuant to the said

Notification, the benefit for Selection Grade was extended to the petitioner vide order dated 2.2.1993 (Annex.3) and from time to time, after completing the service, at the juncture of 9, 18 and 27 years of service, the benefit of the Selection Grade was extended to the petitioner pursuant to the Notification dated 25.1.1992 and no objection was raised by the respondent-authorities and regular benefits for the Selection Grade were extended to the petitioner after completing of 9, 18 and 27 years of service.

Meanwhile, an objection was raised by the Audit Party and a Note was made during the course of Audit inspection vide Annexure 5, wherein it was observed that the Selection Grade which was extended to the petitioner was wrong and benefits of the Selection Grade extended to the petitioner from the date of initial appointment is illegal, but it was to be made from the date of passing the Departmental Examination, therefore, the benefits of the Selection Grade which was extended to the petitioner is not according to the Notification issued by the State Government dated 25.1.1992 on the ground that the services of the petitioner was regularised after passing the Departmental Examination. This fact was not taken into consideration and benefit of the

Selection Grade extended to the petitioner from the date of initial appointment, is illegal by virtue of the provisions laid down in the Notification dated 25.1.1992.

On the basis of the audit objection, recovery was initiated and to that effect, an order dated 27.6.2001 (Annexure 6) was issued by the Tehsildar, Sujangarh for recovery of Rs.23,139/-.

Being aggrieved by the order dated 27.6.2001 (Annex.6), the petitioner has preferred the present writ petition.

Heard learned counsel for the parties and perused the relevant facts existing on record.

It is admitted position on record that the petitioner was initially appointed vide Annexure 1 to the post of Patwari and he joined the services on 18.9.1965 pursuant to the Annexure 1. Since then, he is regularly working as Patwari. In order to make the regularisation of his services, the Departmental Examination was conducted and services of the petitioner were regularised on the post of Patwari after taking the Departmental Examination and he was confirmed w.e.f. the date of initial appointment vide

Annexure 2 dated 8.8.1972. But, on the basis of the Audit objection and taking resorts of the provisions as laid down in the Notification dated 25.1.1992, the benefit of the Selection Grade which were extended to the petitioner were not found to be according to the provisions as laid down in the said Notification.

While making interpretation to the effect that the services of the petitioner were regularised after taking the examination, therefore, from the date of passing the Departmental Examinations, the petitioner is entitled to get the benefit of the Selection Grade, rather than from the date of the initial appointment and by virtue of these facts, the impugned orders have been issued, but looking to the provisions of the Service Rules under which the service conditions are governed, the Full Bench of this Court in the State of Rajasthan and others Vs. Farooq Ahmed and 59 others reported in W.L.C. (Rajasthan) 2005 page -1, while making interpretation of regular service while taking the resorts of the Service Rules and decided the controversy and set at rest with the observations that the meaning of regular appointment means the appointment which is being made from the date of initial appointment in accordance with the Service Rules.

In view of these facts, the regular appointment means the appointment from the date of initial appointment, rather than from the date of passing the Departmental Examinations or the date of regular selection. Therefore, if any change on that very principle, is made, in the present scenario, the petitioner shall be entitled to get the benefit of Selection Grade from the date of initial appointment, rather than from the date of passing the Departmental Examinations.

In view of these facts, I am of the considered opinion that the action taken by the respondents, by virtue of the impugned orders 27.6.2001 (Annex.6) and 9.10.2003 (Annex. 8), is absolutely illegal.

In view of this fact as well as looking to the principles propounded in the Full Bench judgment in Farooq's case (Supra), the petitioner is entitled to get the benefit of the Selection Grade w.e.f. the date of initial appointment, rather than from the date of passing the Departmental Examinations.

The net out come of the aforesaid discussion is that the writ petition succeeds and is allowed. It is held that the impugned orders dated 27.6.2001

(Annexure 6) and 9.10.2003 (Annexure 8) passed by the respondent authorities are illegal and the same are quashed and set aside.

The respondent- authorities are directed that no recovery shall be made in pursuance to the said impugned orders Annexure 6 and 8.

In case, if any recovery has been effected in pursuance to the impugned orders Annexure 6 and 8, the recovered amount shall be refunded to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

In case, the recovered amount is not paid within a period of two months as aforesaid, the petitioner shall be entitled to get interest @ 12% p.a. till the realisation of the amount.

With the aforesaid observations and directions, the writ petition stands allowed.

(R.P.VYAS)J.

Anil